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ARIZONA SUPREME COURT

In the matter of :)	
)	
PETITION TO AMEND)	Supreme Court No. R-15-0005
PROPOSED RULE 7.5, RULES)	
OF CRIMINAL PROCEDURE)	REPLY TO COMMENTS
_____)	

David K. Byers, Director of the Administrative Office of the Courts and petitioner in this matter hereby replies pursuant to Rule 28(D) to comments requested and received by the Court and to issues raised regarding this petition. In particular, this is a reply to the comment filed by David J. Euchner, on behalf of the Arizona Attorneys for Criminal Justice (AACJ). AACJ opposes the proposed amendment to Ariz. R. Crim .P. 7.5 based upon the contention that “it is both unnecessary and contrary to the spirit of Arizona law that presumes a defendant should be released from custody pending trial.” We respectfully and strongly disagree.

AACJ argues that Pre-Trial Services (PTS) does not need the authority to ask the court for a warrant or summons similar to the procedure for prosecutors. They argue that PTS “may advise the court about a violation (or potential violation) of release conditions, and may request that the court set a hearing to

review those conditions with the defendant.” AACJ further argues that a summons or warrant is unnecessary when the court sets a hearing to review release conditions.

One of the petitioner’s goals is to promote fairness and consistency in the process for addressing breaches of conditions of release. The proposed procedure requires simultaneous notification of the judge and the parties of a breach of conditions of release, thus avoiding any issue of ex parte communication. In researching the current practices, it was learned that the procedures for informing the court of violations of conditions of release varied throughout the state, in part, because pretrial services are operated by Adult Probation Departments in some jurisdictions and by Court Administration in other jurisdictions. Additionally, probation officers enforcing pretrial conditions have the authority of a peace officer in the performance of the officer’s duties and therefore the court has an interest in defining the arrest authority process related to probation officers serving pretrial arrest warrants.

Presiding judges have expressed a need to be formally notified of violations directly from the pretrial agency providing the supervision, in addition to the current practice allowed by Rule 7.5 which relies on the prosecutor to file a petition. As noted in the Comment of the State Bar of Arizona in support of this petition, “Under the current Rule 7.5, if a violation of conditions of release was

suspected, no warrant or summons could be issued until a prosecutor first filed a verified petition with the court. However, in many instances, due to the delay in getting the information concerning the breach to a prosecutor, or due to a prosecutor's own schedule, it could be days before a prosecutor was able to file a verified petition requesting a warrant or summons. Due to this delay, a very real risk to public safety could occur and the incidence of flight risk could greatly increase." Additionally, if the prosecutor does not file a petition for any reason, the proposed procedure would allow the Court to be informed of the breach of the conditions of release and make its own determination whether a hearing is necessary to review the conditions of release.

Amending the Rule to allow pretrial services to file a written report stating the facts or circumstances constituting a breach allows for timely direct communication with the court which is especially needed when the nature of the violation presents an immediate risk of flight or danger to any person or the community. Under the current rule, no warrant or summons may be issued to address even such an immediate risk until the prosecutor files a verified petition with the court.

The purpose of issuing a warrant or summons is to bring the defendant before the court for a hearing to review the conditions of release, as allowed in Rule 7.5. The intention is for the court to decide whether to bring the defendant

before the court by summons or by warrant depending on the circumstances of the breach of condition of release. Presumably the court will be guided by the Rule 3.1(b) preference for a summons when criminal proceedings are commenced. The suggested option of providing the defendant a Notice of Hearing may be viable in some circumstances. Petitioner notes, however, that the current rule provides for the issuance of a summons or warrant. Petitioner is not proposing a Notice of Hearing due to the existing rule. Petitioner is proposing a rule amendment consistent with existing procedure where the County Attorney files a petition with the court and the court issues a summons or warrant. If this court deems a Notice of Hearing to be sufficient in this instance, Petitioner has no objection to the addition of this option in the amended Rule 7.5.

Petitioner urges this court to adopt the amended rule as written, or in the alternative, to adopt a modified version consistent with this reply.

Respectfully submitted this 24 day of June, 2015.

By _____
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